

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 108 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

L M P PRECISION ENGG. CO.PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 31/07/98

ORAL JUDGEMENT

Two questions were proposed to be referred by filing an application by revenue under section 256(1) of the Income Tax Act, 1961. The Tribunal, however, was of the view that only question No.1 was to be referred and, accordingly, question No.1 has been referred, which reads

as under:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct and justified in directing the ITO to delete the amount of outstanding sales tax and other liabilities if that were paid before the time allowed u/s.139(1) of the Act for filling the return of income for A.Y.1987-88 regarding the effect of provisions contained in explanation 2 of Section 438 which is expressly retrospective in application and in 1st proviso to Section 438 of the Act inserted by the Finance Act, 1987 w.e.f. 1.4.1988 is prospective in application for and from A.,Y. 1988-89 and onwards?"

In COMMISSIONER OF INCOME-TAX v. CHANDULAL VENICHAND, 209 ITR, 7, the question referred at the instance of revenue was answered by this Court in the affirmative, i.e. in favour of assessee and against the revenue. We are in agreement with the said decision. We, therefore, answer the question in favour of the assessee and against the revenue. The reference stands disposed of accordingly. No order as to costs.
